

AMENDED IN ASSEMBLY JUNE 21, 2000

AMENDED IN SENATE JULY 14, 1999

AMENDED IN SENATE JUNE 24, 1999

AMENDED IN SENATE JUNE 21, 1999

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SENATE BILL**No. 1146**

Introduced by Senator Burton
(Principal coauthor: Senator Polanco)
(Coauthors: Senators Escutia, Haynes, and Karnette)
(Coauthors: Assembly Members Baugh, Cardoza, and
Granlund)

February 26, 1999

An act to amend Section 43104 of, and to add Sections 39027.3 and 43105.5 to, the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 1146, as amended, Burton. Motor vehicles: pollution control devices.

Existing law authorizes the State Air Resources Board to adopt and implement emission standards for new motor vehicles to control emissions from those vehicles.

This bill would require the state board, for all *1994 and later model-year* motor vehicles *that are equipped with on-board diagnostic systems and that are* certified in accordance with specified test procedures, to adopt regulations that would

require motor vehicle manufacturers to take specified actions to make available information relating to motor vehicle emissions monitoring and testing, and diagnostic systems, as prescribed. The bill would ~~require that those regulations allow~~ *provide* for the imposition of reasonable business conditions as a condition of the disclosure of information determined to be ~~confidential, proprietary, or a trade secret~~, and would authorize ~~the regulations a court to include the imposition of punitive sanctions for the improper release of~~ *issue a protective order concerning* that information.

The bill would require the executive officer of the state board, if he or she obtains credible evidence of a motor vehicle manufacturer's failure to comply with any of the requirements imposed by those regulations, to issue a notice of noncompliance to the manufacturer. The bill would permit the motor vehicle manufacturer to request a public hearing before the state board to contest the notice of noncompliance within a specified time period. The bill would authorize the state board, if the motor vehicle manufacturer fails to correct the violation within 30 days from the date of the ~~public hearing~~ *state board finding*, to impose a civil penalty on the manufacturer in ~~the an~~ amount ~~of up to~~ \$25,000 per day per violation.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature hereby finds and
 2 declares all of the following:
 3 (a) There are over 26 million registered motor
 4 vehicles in California, and those vehicles are relied upon
 5 heavily by California residents to conduct their everyday
 6 activities.
 7 (b) The use of those motor vehicles results in hundreds
 8 of tons of pollutants being emitted into California's air
 9 every day, significantly affecting air quality and public
 10 health and safety. To prevent unnecessary pollution, it is
 11 in the best interests of this state to ensure that the ability
 12 of California motorists to obtain service, repair, or

1 replacement of faulty emissions-related components of
2 their motor vehicles is not limited by the arbitrary
3 withholding of service, repair, or parts information by
4 motor vehicle manufacturers.

5 (c) Recent emissions standards adopted and
6 implemented by the State Air Resources Board for motor
7 vehicles manufactured after 1993 have resulted in the
8 development by vehicle manufacturers of “on-board
9 diagnostic computers,” that interface with the many
10 component parts of a vehicle’s emissions control system.
11 Essential service, repair, and parts information and tools
12 for interfacing with a vehicle’s on-board diagnostic
13 computer system ~~are not~~ *may not be* readily available to
14 independent automotive repair technicians and facilities.
15 Accordingly, consumers may be restricted to having the
16 service and repair of faulty emissions-related components
17 of a motor vehicle performed only by franchised
18 dealerships, and consumers may be also forced to
19 purchase replacement parts manufactured solely by or on
20 behalf of the vehicle manufacturer. This restriction of
21 consumer choice and options is contrary to the history of
22 automotive repair, which saw the advent of independent
23 repair technicians and facilities and independent
24 aftermarket parts manufacturers as healthy market
25 competitors to vehicle manufacturers and their
26 dealerships.

27 (d) The ~~arbitrary~~ withholding of essential service,
28 repair, and parts information and tools by vehicle
29 manufacturers from independent automotive repair
30 technicians and independent aftermarket parts
31 manufacturers may result in improper and needlessly
32 costly repairs that could also endanger the public and
33 result in anticompetitive effects harmful to the best
34 interests of the state.

35 (e) *It is the intent of the Legislature in enacting this*
36 *act during the 2000 portion of the 1999–2000 Regular*
37 *Session to assure and stimulate competition in the service*
38 *and repair of motor vehicles, including emissions systems,*
39 *and in the availability of parts for those repairs. Further,*
40 *it is the important policy of this state to encourage*

1 competition so that consumers have choices available to
2 them in the service, repair, and parts used in the service
3 or repair of motor vehicles.

4 SEC. 2. Section 39027.3 is added to the Health and
5 Safety Code, to read:

6 39027.3. (a) “Bidirectional control” means the
7 capability of a diagnostic tool to send messages on the data
8 (bus) that temporarily overrides the module’s control
9 over a sensor or actuator and gives control to the
10 diagnostic tool operator. Bidirectional controls do not
11 create permanent changes to engine or component
12 calibrations.

13 (b) “Covered person” means any person engaged in
14 the business of service or repair of motor vehicles ~~or~~ who
15 is licensed by the Bureau of Automotive Repair to
16 conduct that business, or who is engaged in the
17 manufacture or remanufacture of emissions-related
18 motor vehicle parts for those motor vehicles.

19 ~~(b)~~

20 (c) “Data stream information” means information
21 that originates within the vehicle by a module or
22 intelligent sensors including, but not limited to, a sensor
23 that contains and is controlled by its own module and
24 transmitted between a network of modules and
25 intelligent sensors connected in parallel with either one
26 or two communication wires. The information is
27 broadcast over communication wires for use by other
28 modules such as chassis or transmissions to conduct
29 normal vehicle operation or for use by diagnostic tools.
30 Data stream information does not include engine
31 calibration related information.

32 (d) “Emissions-related motor vehicle information”
33 means information regarding any of the following:

34 (1) Any original equipment system, component, or
35 part that controls emissions.

36 (2) Any original equipment system, component, or
37 part associated with the powertrain system including, but
38 not limited to, the fuel system and ignition system.



(3) *Any original equipment system or component that is likely to impact emissions, including, but not limited to, the transmission system.*

(e) “Emissions-related motor vehicle part” means any automotive part that affects or that may affect emissions from a motor vehicle, including replacement parts, consolidated parts, rebuilt parts, remanufactured parts, add-on parts, modified parts, and specialty parts.

~~(e)~~

(f) “Enhanced information” means information that is specific for an original equipment manufacturer’s brand of tools and equipment.

SEC. 3. Section 43104 of the Health and Safety Code is amended to read:

43104. For the certification of new motor vehicles or new motor vehicle engines, the state board shall adopt, by regulation, test procedures and any other procedures necessary to determine ~~the following~~:

~~(a) Whether~~ *whether* the vehicles or engines are in compliance with the emission standards established pursuant to Section 43101. The state board shall base its test procedures on federal test procedures or on driving patterns typical in the urban areas of California.

~~(b) Whether a manufacturer is in compliance with Section 43105.5.~~

SEC. 4. Section 43105.5 is added to the Health and Safety Code, to read:

43105.5. (a) For all ~~motor vehicles~~ *1994 and later model-year motor vehicles equipped with on-board diagnostic systems (OBD’s) and* certified in accordance with the test procedures adopted pursuant to Section 43104, the state board, not later than January 1, 2001, shall adopt regulations that require a motor vehicle manufacturer to do all of the following *for fair, reasonable, and nondiscriminatory compensation*, to the extent not limited or prohibited by federal law (the regulations adopted by the state board pursuant to this provision may include subject matter similar to the subject matter included in regulations adopted by the United States Environmental Protection Agency):

1 (1) Make available ~~on the Internet~~, within a
2 reasonable period of time, *at a fair, reasonable, and*
3 *nondiscriminatory price, and by reasonable business means*
4 *as determined by the state board, to all covered persons,*
5 the full contents of all manuals, technical service
6 bulletins, and training materials regarding
7 emissions-related motor vehicle ~~parts~~ *information that is*
8 *made available to their franchised dealerships.*

9 ~~(2) Make the diagnostic tools necessary to service and~~
10 ~~repair any of the manufacturer's emissions-related motor~~
11 ~~vehicle parts available for sale, within a reasonable period~~
12 ~~of time, at a nondiscriminatory price to covered persons,~~
13 ~~and make the enhanced information related to tools and~~
14 ~~equipment available to equipment and tool companies in~~
15 ~~an electronic format.~~

16 *(2) Make available for sale to all covered persons the*
17 *manufacturer's enhanced diagnostic tools, and make*
18 *enhanced data stream information and bidirectional*
19 *controls related to tools available in electronic format to*
20 *equipment and tool companies.*

21 (3) If the motor vehicle manufacturer uses
22 reprogrammable computer chips in its motor vehicles,
23 provide equipment and tool companies with the
24 information that is provided by the manufacturer to its
25 dealerships to allow those companies to incorporate into
26 aftermarket tools the same reprogramming capability.

27 (4) Make available to all covered persons, within a
28 reasonable period of time, ~~a description of the operating~~
29 ~~parameters, electronic interface and performance~~
30 ~~specifications, including transfer functions, for all~~
31 ~~emissions-related motor vehicle parts monitored by the~~
32 ~~on-board diagnostic system. That information shall be~~
33 ~~provided for each monitoring system utilized by a~~
34 ~~manufacturer that has the potential of setting a fault code~~
35 ~~or illuminating an on-board diagnostic OBD-II and future~~
36 ~~implementation malfunction indicator light. The~~
37 ~~information required by this paragraph shall not include~~
38 ~~algorithms, software codes, and specific calibration data~~
39 ~~beyond that available on Mode \$06 of the SAE J1979~~
40 ~~Generic Scan Tool. general description of their on-board~~

1 diagnostic systems (OBD II) for the 1996 and subsequent
2 model years, which shall contain the information
3 described in this paragraph. For each monitoring system
4 utilized by a manufacturer that illuminates the OBD II
5 malfunction indicator light, the motor vehicle
6 manufacturer shall provide all of the following:

7 (A) A general description of the operation of the
8 monitor, including a description of the parameter that is
9 being monitored.

10 (B) A listing of all typical OBD II diagnostic trouble
11 codes associated with each monitor.

12 (C) A description of the typical enabling conditions for
13 each monitor to execute during vehicle operation,
14 including, but not limited to, minimum and maximum
15 intake air and engine coolant temperature, vehicle speed
16 range, and time since engine startup.

17 (D) A listing of each monitor sequence, execution
18 frequency, and typical duration.

19 (E) A listing of typical malfunction thresholds for each
20 monitor.

21 (F) For OBD II parameters for specific vehicles that
22 deviate from the typical parameters, the OBD II
23 description shall indicate the deviation and provide a
24 separate listing of the typical value for those vehicles.

25 (G) The information required by this paragraph shall
26 not include specific vehicle algorithms, specific vehicle
27 software codes, or specific calibration data beyond that
28 available on Mode \$06 of the SAE J1979 Generic Scan
29 Tool.

30 (5) Not utilize any access or recognition code or any
31 type of encryption ~~that would prevent~~ for the purpose of
32 preventing a vehicle owner from using a ~~motor vehicle~~
33 ~~part~~ an emissions-related motor vehicle part with the
34 exception of the emissions-related on-board diagnostic
35 system that has not been manufactured by that
36 manufacturer or any of its original equipment suppliers.

37 ~~(6) Provide information regarding initialization~~
38 ~~procedures for dealing with immobilizer circuits or other~~
39 ~~lock-out devices necessary for properly repairing,~~
40 ~~rebuilding, installing, or otherwise reinitializing vehicle~~

1 ~~on-board computers that employ integral vehicle security~~
2 ~~systems.~~

3 ~~(7) All information provided under this subdivision~~
4 ~~shall be provided in a readily accessible electronic format~~
5 ~~that is compatible with computer systems that are~~
6 ~~commonly used by covered persons, and that is accessible~~
7 ~~without the need for any decoding information or device.~~

8 *(6) Provide information regarding initialization*
9 *procedures relating to immobilizer circuits or other*
10 *lock-out devices to reinitialize vehicle on-board*
11 *computers that employ integral vehicle security systems*
12 *if necessary to repair or replace an emissions-related part,*
13 *or if necessary for the proper installation of vehicle*
14 *on-board computers that employ integral vehicle*
15 *security systems.*

16 *(7) All information required to be provided to covered*
17 *persons by this section shall be provided in a format that*
18 *is readily accessible to all covered persons, as determined*
19 *by the state board.*

20 ~~(b) Any information required to be disclosed under~~
21 ~~this section that the motor vehicle manufacturer can~~
22 ~~demonstrate, to the executive officer of the state board,~~
23 ~~on a case-by-case basis, to be confidential, proprietary, or~~
24 ~~trade secret information shall be exempt from disclosure,~~
25 ~~unless the executive officer, at the request of a covered~~
26 ~~person seeking disclosure of the information, determines~~
27 ~~that the disclosure of the information is necessary to~~
28 ~~mitigate any anticompetitive effects. Any determination~~
29 ~~by the executive officer that disclosure of the information~~
30 ~~is necessary to mitigate any anticompetitive effects is a~~
31 ~~final decision of the state board and may be subject to~~
32 ~~review by a court of law in a de novo hearing.~~

33 ~~(c) If the information required to be disclosed by a~~
34 ~~motor vehicle manufacturer pursuant to subdivision (a)~~
35 ~~is determined to be confidential, proprietary, or a trade~~
36 ~~secret, in accordance with subdivision (b), the~~
37 ~~regulations adopted by the state board shall allow for the~~
38 ~~imposition of reasonable business conditions as a~~
39 ~~condition of disclosure, and may include the imposition of~~
40 ~~punitive sanctions for the improper release of~~

~~information that has been determined by the executive officer of the state board to be confidential, proprietary, or a trade secret to competitors of the manufacturer. The regulations adopted by the state board shall provide for the payment of fair and reasonable compensation to the vehicle manufacturer for the required disclosure of information that has been determined by the executive officer of the state board to be a trade secret. The regulations shall also provide for the dissemination of trade secret information through licensing agreements and the collection of fair and reasonable licensing fees. If the board determines that disclosure of any of the information required to be disclosed under subdivision (a) constitutes a taking of personal property, a jury trial shall be held to determine the amount of compensation for that taking, unless waived by the motor vehicle manufacturer.~~

~~(d)–~~

(b) Any information required to be disclosed under this section that the motor vehicle manufacturer demonstrates to a court, on a case-by-case basis, to be a trade secret pursuant to the Uniform Trade Secret Act contained in Title 5 (commencing with Section 3426) of Part 1 of Division 4 of the Civil Code, shall be exempt from disclosure, unless the court, upon the request of a covered person seeking disclosure of the information, determines that the disclosure of the information is necessary to mitigate anticompetitive effects. In making this determination, the court shall consider, among other things, the practices of any motor vehicle manufacturer that results in the fullest disclosure of information listed in paragraph (4) of subdivision (a). In actions subject to this subdivision, the court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting a protective order in connection with discovery proceedings, holding an in-camera hearing, sealing the record of the action, or ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

1 (c) If information is required to be disclosed by a
2 motor vehicle manufacturer pursuant to subdivision (b),
3 the court shall allow for the imposition of reasonable
4 business conditions as a condition of disclosure, and may
5 include punitive sanctions for the improper release of
6 information that is determined to be a trade secret to a
7 competitor of the manufacturer. The court shall also
8 provide for fair, reasonable, and nondiscriminatory
9 compensation to the motor vehicle manufacturer for the
10 disclosure of information determined by the court to be
11 a trade secret and required to be disclosed pursuant to
12 subdivision (b). The court shall provide for the
13 dissemination of trade secret information required to be
14 disclosed pursuant to subdivision (b) through licensing
15 agreements and the collection of reasonable licensing
16 fees. If the court determines that disclosure of any of the
17 information required to be disclosed under subdivision
18 (b) constitutes a taking of personal property, a jury trial
19 shall be held to determine the amount of compensation
20 for that taking, unless waived by the motor vehicle
21 manufacturer.

22 (d) The state board shall periodically conduct surveys
23 to determine whether the information requirements
24 imposed by this section are being fulfilled by actual field
25 availability of the information.

26 (e) If the executive officer of the state board obtains
27 credible evidence that a motor vehicle manufacturer has
28 failed to comply with any of the requirements of this
29 section or the regulations adopted by the state board, the
30 state board shall issue a notice to the manufacturer
31 warning of that noncompliance. The vehicle
32 manufacturer may request a public hearing before the
33 state board within 30 days from the date of the notice of
34 violation to contest that notice of violation. If, after the
35 hearing, the state board finds that the motor vehicle
36 manufacturer has failed to comply with any of the
37 requirements of this section or the regulations adopted by
38 the state board, and the manufacturer fails to correct the
39 violation within 30 days from the date of the ~~hearing~~ *state*
40 *board finding*, the state board shall impose a civil penalty

1 on the manufacturer in ~~the amount of~~ *an amount up to*
2 twenty-five thousand dollars (\$25,000) per day per
3 violation until the violation is corrected. ~~Each day a~~
4 ~~violation continues shall be considered a separate~~
5 ~~violation.~~

6 ~~(e)~~ *The state board may provide additional time for*
7 *compliance prior to imposing a civil penalty if the state*
8 *board determines that the violation cannot be remedied*
9 *within 30 days of the state board's finding that a violation*
10 *has occurred.*

11 *(f) The Department of Consumer Affairs, in*
12 *coordination with the state board and the Bureau of*
13 *Automotive Repair, shall, through the year 2009, report*
14 *annually to the Legislature on the extent to which the*
15 *implementation of this act enacted during the 2000*
16 *portion of the 1999–2000 Regular Session is effective in*
17 *furthering the intent and policy contained in Section 1 of*
18 *this act.*

19 *(g) Nothing in this section is intended to authorize the*
20 *infringement of intellectual property rights embodied in*
21 *United States patents, trademarks, or copyrights, to the*
22 *extent those rights may be exercised consistently with*
23 *any other federal laws.*